
Hazel Genn

Dame Hazel Genn QC FBA is Dean and Professor of Socio-Legal Studies at University College London. A video of extracts from this interview can be found via www.britishacademy.ac.uk/prosperingwisely/genn

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Originally you studied sociology. What made you want to study that?

Hazel Genn

When I was in my teenage years, I thought I wanted to be a social worker. This probably links later on to my interest in law. I was always quite interested in the concept of justice, and in vulnerable people. At university I did sociology and social anthropology, and also what was called social administration in those days, which was supposed to fit you for social work. I became interested in empirical social science – in how society works, how it is held together.

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What did you gain through that experience?

Hazel Genn

The most practical thing that I gained from studying sociology was learning social science research methods. In those days sociology was heavily quantitative, so I was compelled to do a course in statistics and learned how to do quantitative social science. Throughout my career, I think that has been fantastically useful. It has made it possible for me to combine the rigorous skill of a quantitative social scientist with that of a traditional lawyer. In this country that is an unusual combination.

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How does that contribute to the study of law?

Hazel Genn

Because you need to know how the law works.

What most lawyers are interested in is doctrine. What does the law say? Why has a judge interpreted something in a certain way, and is he right in his interpretation or approach? Academic lawyers spend a huge amount of time picking over legal cases. I can do that, and when I teach black-letter law, that is what I do.

But that is not what I am most interested in. I am interested in how the law *works*. Does the law do what it is supposed to do? Can people use it in the way we want them to be able to use it? How does the law support social order? How does the law support economic activity, economic development? Might it be that – this is one of my catchphrases – the law and the justice system are as important to our nation's health, as our hospitals? Unless the law works, unless we can maintain order, unless you have the rule of law, nothing else works.

That may just be the sound of the lawyer saying that the law is more important than everything else. But it is as important as many other things that people would recognise more immediately as being important to their well-being.



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How does an efficient, fair justice system enhance people's well-being?

Hazel Genn

Let me put it the other way around. What happens if you don't have an efficient and fair and well-operating justice system? What does its absence mean for any society? Our commerce operates on the basis of contracts, of agreements, which people abide by. Somebody who enters into a contract, who enters into some kind of trading arrangement, knows that if the person on the other side does not comply with the terms of the agreement, they can force them to do so, or they can get compensation through the courts. What stands behind that kind of activity is a well-functioning justice system.

What does a well-functioning justice system need? You need judges and lawyers who have the technical legal skills for them to know what the law is and to apply it properly. You have laws that are known and that are published, and that people are required to abide by – including the state. Government doesn't like it very much when judges overturn decisions, or tell it to go back and decide again. But everybody – citizens, businesses, the state – are all bound by laws that we know. Where there is a disagreement, or where there is a problem because your rights have been infringed, you can argue your case before a judge in court, where you know the judges aren't corrupt and where you can trust them to make a decision according to the published law. Actually, it is a huge luxury to have that kind of order in your system. Many other societies do not.

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How far does the academic study of the law contribute to its healthy functioning?

Hazel Genn

The academic study of law contributes a great deal. We live in a common law system where a lot of our law does not come directly from Parliament. Instead it is found in the decisions of judges in individual cases in the courts. What academics do is to put some order onto that. They provide frameworks for understanding how the law is developing. And they criticise what judges say in courts, or demonstrate where there are inconsistencies in reasoning – which then influences the way judges think and decide in the future. So the academic study of legal doctrine influences the legal decision-makers.

The empirical study of how the law operates – the kind of work that I do – has a huge influence on policy-makers who are devising policies to achieve certain kinds of objectives which have legal implications. If you can demonstrate that the law is not actually delivering the outcomes that are wanted, or that doing it a different way might be better, you can influence the making of policy. We have a massive amount of regulation. Many lawyers are involved in looking at how regulation operates on the ground and can provide information that helps policy-makers to review the kinds of work that they are doing. Empirical legal scholars can shed light first of all on how certain legal relationships operate in practice, and then on how regulation designed to influence behaviour or relationships operates in practice.

The judiciary depend on academic writing. It helps them to think through how the law is developing in practice.

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What is the relationship between those who practise law and those who study law academically?

Hazel Genn

Some judges get irritated with academics for picking over their decisions and saying that they are not terribly well reasoned. There is a good-natured tension sometimes between the judiciary and academics. But actually, the judiciary depend quite heavily on academic writing, for them to understand better certain areas of law. It also helps them to think through how the law is developing in practice.

The practitioners depend very heavily on academic lawyers, not just to write the heavy-duty academic analysis of doctrine, but also to explain. A lot of legal academics actually write practitioner texts. Some people think this is a simplification of the law. It's not; it's a distillation of the essential legal principles that practitioners need to have at their fingertips in order to advise clients and argue cases in courts.

So, academic lawyers provide quite sophisticated analyses of the development of doctrine, which influences

judiciary and high-level practice. But they also provide the very solid material that practitioners have on their bookshelves, which they need to consult for every day practice to look up an area of law they don't know very well.

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You also study the issue of access to justice.

Hazel Genn

Access to justice is one of the things I have spent most of my time on. We say that the law binds everybody. Everyone is equal before the law, everybody should have equal access to the justice system. I have always had this interest in justice and injustice, and the difficulties for vulnerable people in modern societies. So, my studies have focused a lot on how ordinary citizens, who ostensibly have rights, can make those rights effective by having access to the courts. I really do believe that the courts are operating at their best when they are enabling people who are not powerful, people who have weaker voices in society, to become powerful, by bringing a more powerful person – or the state – to account.

When that works well – and it doesn't always work well – I think that is a very compelling argument for having a well-functioning justice system. Of course, at the moment, we are in difficult times financially, where money is very constrained, and all government departments – including the Ministry of Justice – are being asked to cut costs. One area where the Ministry has cut costs is legal aid. I think that legal aid is very important if we say that the operation of the courts constitutes the rule of law in action. And there is no point in living in a society governed by the rule of law, if weak, powerless citizens can't get access to that law to vindicate the rights that we give them. Where you have a situation where people don't have the knowledge of the law, don't have the skills that they need to be able to advocate for themselves, and cannot afford to pay for an advocate, then legal aid is very important – not just for that individual, but for society to be doing its job and for the justice system to be operating effectively.

I think we are moving into a time where people involved in civil justice problems are simply not going to be able to get legal aid to pay for advocacy, for representation. And the fantastic network of organisations we have – Citizens Advice Bureaux and Law Centres, which have been a model for many other countries around the world – is now going to struggle because of the loss of legal aid. I do worry about how people are going to have access to the courts and tribunals in the future in order to be able to vindicate their rights.

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Can you talk about the research work you have done on access to justice?

Hazel Genn

In the late 1990s I did a study called *Paths to Justice*. I did two national surveys, one in England and Wales, and one in Scotland (because Scotland has a different legal system).¹

¹ Hazel Genn, *Paths to Justice: What People Do and Think About Going to Law* (1999); Hazel Genn & Alan Paterson, *Paths to Justice Scotland: What Scottish People Do and Think About Going to Law* (2001).

These were surveys of citizens, asking them about the kinds of disputes and difficulties that they had been involved in that had a legal aspect, then trying to understand how people grappled with them. It was about people's need for the courts and the legal system: whether people wanted access to justice and if they did, how they went about getting it. What was ground-breaking about that piece of work was that it started not from the point of view of people already in the legal system. It started at ground level. What kind of problems do people have for which there is a legal solution? How often do they have them? What do they do about them when they are in that situation? Do they do nothing, do they just lump it, do they get help, do they resolve it? Also, very importantly, what is the broader effect on their lives of being involved in one of these kinds of disputes or problems that remains unresolved?

What was important about those surveys was that they were nationally representative. So they provided heavy-duty quantitative data about the prevalence of these kinds of disputes. We could talk about how many people do this, how many people do that, and what happens with them. That was interesting and useful. And I think it was quite a wake-up call to the Lord Chancellor's Department at that time, about the kind of unmet need for information, assistance and help in resolving these kinds of problems.

For me, the thing that came out of it which I thought was really very important was the impact that unresolved legal problems can have on people's health, on their social relationships, on family relationships: how having a legal problem that you cannot solve can have a kind of cascade effect, so that everything starts falling to pieces. I don't think that anyone had described that before. People who advise citizens with problems have a sense that they often have clusters of problems, but I don't think that anyone had documented it before. Demonstrating the clustering of problems was very important.

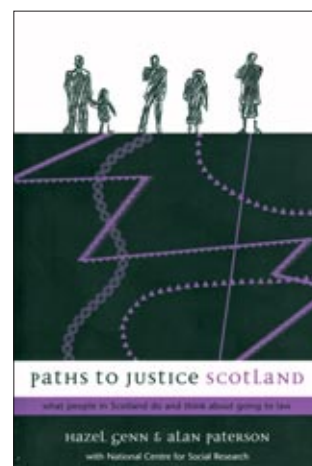
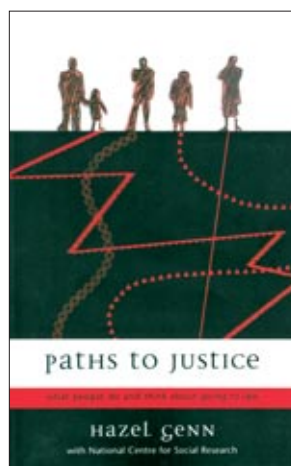
What came out of the study was how having a legal problem that you can't solve can have a kind of cascade effect, so that everything starts falling to pieces.

I do believe – in fact, the policy people have told me that it is true – that at the time of that study, it was almost a kind of paradigm-shifting study for the policy-makers. It was published in 1999. The Labour Government had recently been elected, and they had initiated a modernising justice programme. And the *Paths to Justice* study flipped their thinking. Instead of focusing on what judges, lawyers and courts were doing, it flipped government thinking to ask: 'Hang on, what is it that people want? What do the consumers or potential consumers of the legal system want from it?' What policy advisers have said to me is that it changed the way that they thought about what they were doing, and strategically it has made them think that the justice system provides a service for society. It just changed the way the government thought about things.

It also gave them a methodology for assessing what kinds of legal needs that people have, and a way of understanding it. It also helped them to think about how to focus legal aid more on particular areas of need – especially those kinds of legal problems that are likely to trigger the kinds of cascades of disasters that happen afterwards.

I do think it was relevant for policy-makers at that particular time. It has been influential in policy terms, but also the approach has been copied in many other jurisdictions. *Paths to Justice*-type studies have been done all over the world.

I think that that is the most important piece of work that I have done.



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It must have been very satisfying too.

Hazel Genn

I think *Paths to Justice* was one of the most difficult but one of the most satisfying pieces of work I've done. The satisfaction partly comes from the fact that it was very interesting to do. I am just a very inquisitive person; I love knowing how people do things. I spent a lot of time in the early developmental stage of that study, sitting in people's homes interviewing them. Whenever I do research, it is absolutely critical for me that I am involved in the data collection. In order to understand, analyse and write up the results, I have to have had the experience of sitting there, talking to people about their experiences.

The other satisfying thing for me as a social scientist was the combination of data collection techniques. I have always said that if you are doing empirical social science, the best approach is to have a combination of methodologies, because you can answer different kinds of questions. I have always described *Paths to Justice* as a 'quant-sandwich'. I started with qualitative work. We put together different focus groups – members of the public, people who advised in Citizens Advice Bureaux, lawyers – just talking round the table about the kinds of everyday legal problems that people have. We wanted to get a sense of the vocabulary that people used and a feel for how they talked about it. So we started with quite a long period of qualitative work, just talking to people, developing open-ended questionnaires to try to get the questions right.

Then we constructed a rigorous, representative, face-to-face national survey of England and Wales, and then another one in Scotland. These surveys produced a huge amount of data. Then we identified particular kinds of cases, and re-interviewed respondents – carrying out really long, in-depth, qualitative interviews with people who had had particular kinds of experiences. So you could present the quantitative data to answer ‘how much and how many’ questions, and undertake some reasonably sophisticated analysis. But we were also able to present the stories about how legal disputes were handled, the kinds of paths people took to try and resolve problems, and the thought processes people went through. We could also look at the impact of certain kinds of problems on people’s lives. So you could put flesh on the bones of the statistics.

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In late 2012, you gave a speech about the decline in the access to civil courts. And you said that we don’t know what the impact of that will be.²

Hazel Genn

If we no longer have cases being decided on their merits, we give people rights but we no longer make it possible for them to vindicate their rights. What will the long-term impact of that be on society? I talked a bit about the privatisation of justice, because the government at the moment is trying to divert cases away from public courts into private compromise, saying ‘Don’t stand on your rights, have a reasonable conversation and compromise your rights.’ That might be okay in certain circumstances. But what will happen if we don’t have cases going to court, if the courts start to crumble, if there is nowhere you can go?

The point I made at the end of the speech is that the end of blood feuds and self-help in the 12th century was around the same time as you had the development of the King’s Courts – the Common Law courts. I argued that, if people can’t get access to the courts, if they can’t get the advice they need or advocacy, and they can’t get access to public, peaceful systems for dispute resolution, what do they do? Send round the boys? I recently talked about this to a meeting of Australian judiciary and practitioners,³ and ended with a rather compelling image from *Pulp Fiction*, of the guys coming in to settle a dispute with their guns.

There is an empirical question as to whether, when you don’t have access to public forums for dispute resolution, there is a greater resort to self-help. There are examples of this. Banks don’t bother to go to court when they have debtors; now they hand it over to debt collection agencies,

who phone people up all night long and harass them until they are run ragged. That’s not going through the proper processes; that is self-help. I would be interested to know how many people are resorting to non-peaceful self-help.

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What is happening to the civil courts?

Hazel Genn

They are short of resources and many are being closed down. There is a problem because when the government is short of money, the criminal courts take priority. But the civil courts quietly do their work, also supporting social and economic order.

Most sensible people don’t want to be involved in a legal case. Most people don’t rush off to lawyers when they are involved in a problem. But when you talk to people, when you interview the population about legal issues, what they will say is that it is good to know that, if you were desperate, if something terrible happened, there is standing behind all of us this justice system which we trust – or mostly trust – to do justice, and we think it would protect us.

In her 2008 Hamlyn Lectures, Hazel Genn criticised what she saw as the downgrading of civil justice in the UK.

If we didn’t feel we had that kind of access, I think we would lose something that supports what I call ‘the tranquillity of the state’ – the fact that we do live in a relatively tranquil state most of the time.

Courts have a practical value, but they also have a symbolic value. If ordinary people no longer have access to the courts or tribunals in order to vindicate the rights that they are supposed to have, what will that mean for respect for the law, for our connection with society? I’m not saying it *will* be disastrous. What I am saying is, I am concerned about what the effect will be.

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What is the wider contribution that the humanities and social sciences can make to addressing the challenges that face us?

Hazel Genn

I think that social science is helpful in understanding some of the global challenges that face us – about understanding human behaviour better, so that we understand where we want to improve things, what kinds of government strategies will actually help to improve things. But there

² ‘Why the privatisation of civil justice is a rule of law issue’, 36th F.A. Mann Lecture, Lincoln’s Inn, 19 November 2012.

³ H. Genn, ‘What is civil justice for? The significant social purpose of the civil justice system’, Speech to Australian Bar Association conference, *Improving the route to Judicial Determination*, Bologna, 26 June 2013,

are so many things we don't even know about the world. There is a lot in science we don't know about how the world works, but there is a lot about the social world that we don't understand enough about. There are enormous areas of the law where we have no idea how things operate, we don't know how systems work.

We need to be not just helping the government to solve the challenges that we know about now, but to be thinking forward, about what are the challenges that are coming up. We need to be looking on the horizon, using our skills to understand better not just how things are, but where things are going, and what we are going to need to do to meet the challenges of the future. I think those are absolutely critical skills, and that is a very important contribution that social science and arts and humanities and law make to society.

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So government needs to make possible basic research that has longer-term value?

Hazel Genn

If you only concentrate on what gives us an immediate pay-off, it is very short-sighted. The problem with government is that, of course, they are usually thinking in three- to four-year terms. It is the job of fundamental social science research to help with the immediate challenges, but to think beyond. We are the people who are going to still be there, doing the research when this particular lot of politicians have gone and somebody else is coming in. So we seriously need to be doing that forward-thinking.

The government has to fund that forward-thinking. They have got to be thinking longer-term, because this society needs to continue and prosper in the future, and this is the legacy for future generations, and we need to be a part of that. I think that is why government does fund it, because at some level they do understand that. That is why they do continue to fund both basic research and the more instrumental kind of research.

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Do academics need to engage more with wider audiences and with policy-makers?

Hazel Genn

I really do believe that academics are understanding much better the need to disseminate what they are doing, the need to address wider audiences. In the past, sometimes academics have spent too much time talking to each other, in very sophisticated ways – which is exclusive. I think that academics are actually taking much more pride in the fact that what they are doing is not only intellectually interesting, is not only pushing forward the boundaries of wider knowledge, but actually has some practical value.

The kind of work that I and many of my colleagues do might arise out of conversations with policy advisors. We might draw them in to help us think through the research questions. And at the end of it, we will be writing publications that are accessible to them, that meet the need that they have to answer very specific questions – as well as being able to address wider, theoretical questions that are of more academic value. I don't see that there is a conflict between that. I have always been a bit bemused by people who feel that it is impossible to have something that is theoretically sophisticated, but which is also of relevance to policy.

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How can the Fellowship of the British Academy contribute to the debate you are talking about?

Hazel Genn

In the British Academy you have people who are at the top of their fields. By definition, they have distinguished themselves in terms of the quality of the research they have done, the quality of thought and debate.

The problem with government is that they are usually thinking in three- to four-year terms. It is the job of fundamental social science research to think beyond.

I think that what the Academy's Fellowship can do – what it must do – is to concern itself with the challenges that we face as a society, that we face globally. It has to address itself to those immediate issues, as well as horizon-gazing, thinking forward about what is coming up. People used to talk about providing a solid evidence base, but it actually provides context for political discussions, and even though politicians do not necessarily listen to everything you say, or want to hear everything you say, the fact that you are providing thoughtful, intelligent, well-researched content, that you are putting that content into the debate that is going on, I think is important, and it helps to keep debate focused on the things that are important.

The British Academy comprises people who have done a lot, who know a lot, and have a huge amount to contribute to culture, to policy debate, to science. We face issues about well-being, about ageing, about the economy. The Academy's Fellows are people who have spent their lives researching these issues. They have knowledge, information and insights which will be valuable, and which will help us as a society to move forward in a constructive way. The British Academy has a duty to do that.